Declassified and Approved For Release 2012/02/09 : CIA-RDP90-00965R000403710009-1

ARTICLE APPEARED ON PAGE A12
WASHINGTON POST
26 November 1986

Prosecution Seen Possible Under Range of Laws; Independent Counsel Urged

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Attorney General Edwin Meese III said yesterday that the Justice Department is trying to determine whether any U.S. laws were broken in the international shell game that transformed U.S. arms for Iran into $10 million to $30 million worth of cash for the contras in Nicaragua.

But legal experts and administration critics said they felt sure there are more than enough criminal statutes on the books to provide for prosecution. They also suggested that an independent counsel—not the Justice Department—ought to be making the determination.

"These dealings not only raise very serious questions regarding transfer of arms to Iran, they also raise the real possibility that officials at the highest levels of the executive branch have violated federal law," House Judiciary Committee Chairman Peter W. Rodino Jr. (D-N.J.) and Rep. Dan Glickman (D-Kan.) said in a letter to Meese. "The credibility of the president and his ability to govern are threatened . . . . An independent investigation is the only way to restore the confidence of the American people," they wrote.

According to Meese, Lt. Col. Oliver L. North, the key National Security Council staff member involved in the secret operation, "knew precisely" about the arrangement whereby Israeli intermediaries evidently marked up the prices on $12 million worth of arms that they shipped to Iran and then funneled the profit to Swiss bank accounts for the contras fighting the Nicaraguan government.

There was widespread agreement on Capitol Hill that this violated the spirit and probably the letter of the Boland Amendment that remained in effect in varying forms from October 1984 to last month. It was aimed at barring the Central Intelligence Agency, the Defense Department and "any other agency or entity of the United States involved in intelligence activities" from using any funds—other than those explicitly earmarked by Congress—to support, directly or indirectly, military or paramilitary operations in Nicaragua.

The law, however, contains no explicit penalty provisions. Legal experts said yesterday that other statutes would have to be used if anyone were to be prosecuted. They cited many possibilities.

"If there's one thing about the federal criminal code," said Steven R. Ross, general counsel to the clerk of the House, "it covers situations where people are trying to hide things or fool other government agencies. The law has many weapons to attack that with."

Rep. John Conyers Jr. (D-Mich.), chairman of the House Judiciary subcommittee on criminal justice, said through an aide that he had four statutes in mind that he intends to mention to the Justice Department next week in a formal report, including one whose most famous workout was at the 1974 Watergate cover-up trial of President Richard M. Nixon's top aides.

It is the catchall federal conspiracy law prohibiting two or more persons from conspiring "either to commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose."

It was applied, successfully, at the cover-up trial to a conspiracy to defraud the Federal Bureau of Investigation, the CIA and the Justice Department "of the government's right to have the officials of these departments and agencies transact their official business honestly and impartially, free from corruption, fraud, improper and undue influence, dishonesty, unlawful impairment and obstruction."

Without more facts, former attorney general Benjamin Civiletti said he could not say "what the particular remedies are for this particular tricky business." But he said that for laws that include no specific penalty provisions, "you have to look at the general laws—to find out whether or not there's been a conspiracy to violate a law of Congress or whether there's been a breach of government duty."

"There's no easy answer," Civiletti said. "It could be a civil wrong or it could be a criminal wrong. The question of intent has a lot to do with it."

Conyers led 11 House members last month in calling for an independent counsel (formerly known as a special prosecutor) to investigate North and others for their controversial dealings with the contras. In renewing that call yesterday, he also cited a criminal law forbidding misuse of public money, a federal fraud and false statement statute, and a statute outlawing false statements.

"Somewhere along the line, somebody must have filed some paper to get this deal moving," said former House counsel Stanley M. Brand. "The failure to characterize what was really going on could be a crime . . . . If the situation is bad enough, somebody will find a law to which it applies."

"I'm sure a serious prosecutor wouldn't have any trouble coming up with a long list of laws that have been violated here," said Morton Halperin, Washington director of the American Civil Liberties Union, which joined in the calls for an independent counsel. He said it is important that the counsel's mandate be broad enough "to cover all aspects of our secret dealings with Iran and all U.S. aid to the contras, including the private stuff," assistance ostensibly provided by private parties.

Staff writer Mary Thornton contributed to this report.

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